

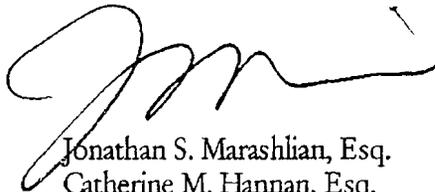
to the detriment of Compass Global, not USAC. On a broader scale, however, USAC's dereliction of duty damages not only Compass Global but the underlying federal support mechanisms as a whole, which have been rendered significantly less accurate and predictable as a result of USAC's arbitrary and capricious implementation of its policies and procedures.

And, Compass Global notes, nothing can justify the substantive alteration of filed documents by USAC without a filer's knowledge or permission. Industry participants have long criticized USAC as unapproachable and unresponsive, and as intractable from any position once taken. The course of events in this matter, however, where officially filed documents have been altered, information withheld and last-minute explanations devised by USAC, extend far beyond the frustrating, yet routine "red-tape" which characterizes filer's interactions with USAC. Compass Global respectfully submits that these issues mandate a close review of USAC's conduct in this matter.

For the reasons set forth above, Compass Global respectfully requests that the Federal Communications Commission ("Commission") overturn that portion of the Administrator's Decision on Contributor Appeal dated June 2, 2008 ("Administrator's Decision") refusing to accept and process the Company's revised 2006 Form 499-A; hold in abeyance all purported collection

actions pending full and final resolution of both this matter and the File No. EB-06-IH-3060; and initiate an investigation into the conduct of USAC over the course of the instant matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JSM', written over the typed name of Jonathan S. Marashlian.

Jonathan S. Marashlian, Esq.
Catherine M. Hannan, Esq.
Helein & Marashlian, LLC
1483 Chain Bridge Road, Suite 301
McLean, Virginia 22101
Tel: 703-714-1313
Fax: 703-714-1330
E-mail: jsm@CommLawGroup.com

July 31, 2008

Counsel for Compass Global, Inc.

EXHIBIT 1

**Letter from Hugh L. Boyle,
Investigations & Hearings Division, Enforcement Bureau
"Re: Section 64.1195 Compliance Survey,
Reference Number UC 4-11",
June 9, 2006**



Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

June 9, 2006

VIA U.S. MAIL

Compass Global
Legal / Regulatory Department
50 Tice Blvd.
Woodcliff Lake, New Jersey 07677
USA

Re: Section 64.1195 Compliance Survey
Reference Number: UC 4-11

Dear Madame/Sir,

The Investigations and Hearings Division of the Enforcement Bureau is verifying that all carriers providing telecommunications services are complying with the carrier registration requirement in section 64.1195 of the Commission's rules. This registration requirement extends to carriers that acquire telecommunications services for resale, as well as to carriers that acquire resold telecommunications services for resale.

It is our understanding that Compass Global has been purchasing telecommunications services for resale. We have not been able, however, to determine whether Compass Global has registered with the Universal Service Fund Administrator pursuant to the Federal Communications Commission's rules. In accordance with section 64.1195(a) of the Commission's rules, carriers that will provide or are providing interstate telecommunications services to end-users must file registration information by submitting a Telecommunications Reporting Worksheet, FCC Form 499-A, to the Universal Service Fund Administrator.

Entities that provide interstate telecommunications services to the public, or to such classes of users as to be effectively available to the public, for a fee are considered telecommunications carriers providing interstate telecommunications services. Interstate telecommunications services include, but are not limited to: (1) cellular telephone and paging services, (2) mobile radio services, (3) operator services, (4) personal communications services (PCS), (5) access to interexchange services, (6) special access service, (7) wide area telecommunications service (WATS), (8) toll-free service, (9) 900 service, (10) message telephone service (MTS), (11) private line service, (12) telex, (13) telegraph, (14) video services, (15) satellite service, (16) resale of interstate services to end-users, (17) payphone services, (18) frame relay service, and (19) ATM service. Accordingly, if your company is planning to provide or is providing any of

Compass Global
UC 4-11
June 9, 2006

Page 2 of 3

these interstate telecommunications services to end-users for a fee, you must register with the Universal Service Fund Administrator if you have not done so already.

In connection with our attempts to ascertain that Compass Global has complied with the Commission's registration requirements, you are directed to provide specific information about your company by accessing our website through the link provided below. You must provide your company's name, address, contact person, telephone number, FAX number, and e-mail address. In addition, you must list the number of years Compass Global has been providing interstate telecommunications services and the types of telecommunications services Compass Global provides. Finally you must provide Compass Global's Form 499-A Filer ID number that Compass Global received upon its submission of registration information, the date of registration, and, if different from company name, the registration name. If your company is not required to file the FCC Form 499-A for registration purposes, you should explain why it is not required to do so. Failure to provide the requested information, including without limitation a Form 499-A Filer ID number, date of registration, or detailed explanation why Compass Global is not required to file registration information may subject Compass Global to enforcement action.

You are directed to provide this information on the Commission's web site at <http://www.fcc.gov/eb/RRF/>. Please access the template provided on the web site and enter the information in the appropriate spaces. Please note that you must also enter the Reference Number shown at the top of this letter in the template. If you are unable to provide a response using our web site, please send the information by U.S. Postal Service to Joseph Watts, Room 4-C421, 445 12th Street, S.W., Washington, D.C. 20554. The information must be input via the website or be delivered to the listed address no later than 5:00 PM Eastern Standard Time Friday, June 23, 2006.

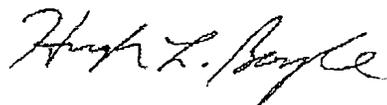
This letter is issued pursuant to 47 U.S.C. §§ 4(i), 4(j), 201, 211, 215, 218, 220, and 403 of the Communications Act of 1934, as amended ("the Act"). To knowingly and willingly make any false statement or conceal any material fact in reply to our data request is punishable by fine or imprisonment. See 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17. Failure to respond fully to an Enforcement Bureau letter constitutes a violation of the Communications Act of 1934, as amended ("the Act") and the FCC's rules and may subject Compass Global to enforcement action. *See SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd 7589 (2002); *Globcom Inc.*, Notice of Apparent Liability, 18 FCC Rcd 19893, at n. 36 (2003); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005).

Compass Global
UC 4-11
June 9, 2006

Page 3 of 3

If you have any questions, please contact Nand Gupta by phone at 202-418-2279 or e-mail at nand.gupta@fcc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh L. Boyle". The signature is written in a cursive style with a large, sweeping initial "H".

Hugh L. Boyle
Chief Auditor
Investigations & Hearings Division
Enforcement Bureau

EXHIBIT 2

**Response of Compass Global, Inc.
To Notice of Apparent Liability for Forfeiture,
File No. EB-06-IH-3060**

(without exhibits)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-06-IH-3060
Compass Global, Inc.)	NAL/Acct. No. 200832080083
Apparent Liability for Forfeiture)	FRN No. 0009690256

Response of Compass Global, Inc.
To
Notice of Apparent Liability for Forfeiture

Jonathan S. Marashlian, Esq.
Catherine M. Hannan, Esq.
Christopher A. Canter, Esq.
HELEIN & MARASHLIAN, LLC
1483 Chain Bridge Road, Suite 301
McLean, Virginia 22101
Tel: 703-714-1313
Fax: 703-714-1313
E-mail: jsm@CommLawGroup.com

June 9, 2008

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. INTRODUCTION	1
II. BACKGROUND/CHRONOLOGY OF EVENTS.....	5
III. ISSUANCE OF THE NAL IS IMPERMISSIBLE, PREMATURE AND DEPRIVES COMPASS OF ESSENTIAL DUE PROCESS	29
IV. THE TENTATIVE CONCLUSIONS WHICH CLASSIFY COMPASS' SERVICES AND REVENUE AS "TELECOMMUNICATIONS SERVICES" AND "TELECOMMUNICATIONS SERVICES REVENUE" SUBJECT TO FEDERAL SUPPORT PROGRAM CONTRIBUTION BASES, AS SET FORTH IN THE NAL, ARE INCORRECT AS A MATTER OF LAW	37
A. PROVIDERS OF TELECOMMUNICATIONS SERVICES OFFERED ON A COMMON CARRIER BASIS ARE SUBJECT TO REPORTING AND USF CONTRIBUTION OBLIGATIONS	37
1. Carriers That Are Required To File Telecommunications Reporting Worksheets and Contribute to USF.....	37
2. Compass Is Not Required To File A Worksheet or Contribute To The Fund.....	40
B. COMPASS IS NOT A "COMMON CARRIER" SUBJECT TO FCC REGISTRATION, FORM 499 FILING OR FEDERAL SUPPORT MECHANISM FUNDING OBLIGATIONS	41
1. Compass Is Not Providing Services on a Common Carrier Basis and, Therefore, As a <i>De Minimis</i> Provider, Is Not Required to File Form 499 or Contribute to the Fund	41
2. Compass' Service Offerings	44
3. Compass Does Not Offer Its Services on a Non-Common Carrier Basis	47
4. Compass Does Not Allow Customers to Transmit Intelligence of Their Own Design And Choosing	49
5. The Commission May Not Arbitrarily Classify Compass as a Common Carrier in Order to Fix a Shrinking Fund	50

C.	COMPASS DOES NOT PROVIDE A “TELECOMMUNICATIONS SERVICE”	51
1.	Telecommunications Services Must Be Effectively Available To The Public.....	51
D.	COMPASS PROVIDES WHOLESALE SERVICES TO RETAIL COMMON CARRIERS THAT SELL TO THE PUBLIC AND THEREFORE, IS NOT SUBJECT TO FEDERAL SUPPORT PROGRAM CONTRIBUTION BASES	55
1.	Including Wholesale Revenue In The USF Contribution Obligations Would Be Unfair And Result in Double-Counting.....	55
2.	The Fund’s Contribution Methodology is Based on Retail Revenues Derived From End Users of Telecommunications Services.....	56
3.	Revenue Reporting and the “Carrier’s Carrier Rule.”	57
4.	The Carrier’s Carrier Rule’s Imposition of Vicarious Liability on Wholesale Providers is Invalid and a Violation of the APA.....	58
5.	Compass, as a Wholesale Provider, is Not Obligated to Contribute to the Fund.	62
6.	Compass Can Demonstrate Absolute Compliance with the Post-2004 Carrier’s Carrier Rule With Respect to Its EWS Offerings	62
7.	No Forfeitures Are Justified For Contribution Obligations Tied To Revenues Derived From EPS.....	63
8.	The Significance of Compass’ Wholesale Services	65
E.	THE <i>DE MINIMIS</i> EXEMPTION RELIEVES COMPASS OF FILING AND CONTRIBUTION (AND EVEN ITS REGISTRATION) REQUIREMENTS.....	66
1.	The <i>De Minimis</i> Exemption Excuses Contribution Obligations When the Expected Contribution is Less Than \$10,000.....	66
2.	Compass’ Contribution Obligations Tied to its Enhanced Wholesale Services Has Always Been <i>De Minimis</i>	68
F.	UNDER THE ACT AND WEIGHT OF COMMISSION PRECEDENT, EWS AND EPS ARE NOT “TELECOMMUNICATIONS SERVICES”; EWS AND EPS ARE MORE AKIN TO “NETWORK ELEMENTS” OR “INFORMATION SERVICES”	69
1.	Compass Only Engages in “Session Processing” and Therefore Does Not Provide a Telecommunications Service	71
2.	Compass’ Service Does More Than Simply Transport Voice Traffic and is Therefore Best Classified as an Information Service.....	73

3.	The Information Services Aspect of Compass' Product Offering Also Support Classification of its Products as Information Services.....	76
4.	Protocol Processing Functionality Qualifies Compass' Service as Information Service	78
5.	AT&T IP-in-the-Middle Order was Specifically Limited to End-to-End Services and, Therefore, Cannot be Reasonably Applied to Carriers like Compass	81
6.	Any VoIP Transport Provided by Compass is a Computer-to-Computer IP-Enabled Transport System and is, Therefore, an Information Service and is Not Interconnected VoIP	83
7.	The Commission's Categorization of Compass' Services as Telecommunications Services Overlooks the Regulatory Uncertainty Surrounding the Regulation of IP-Enabled Telephony	88
8.	Liability Cannot Be Imposed on Compass for Following a Reasonable Interpretation of the Commission's Rules	90
9.	The Commission Cannot Unreasonably Impose Liability on Compass for Willfully Failing to Conform to Rules of Which it Had No Fair Notice	91
G.	COMPASS HAS NOT VIOLATED FCC RULES BY FAILING TO TIMELY FILE FORMS FCC 499	94
H.	COMPASS HAS NOT VIOLATED FCC RULES BY UNDER-PAYING CONTRIBUTIONS TO FEDERAL SUPPORT MECHANISMS.....	96
I.	COMPASS HAS NOT VIOLATED FCC RULES BY FAILING TO MAKE TIMELY REGULATORY FEE PAYMENTS	99
V.	THE PROPOSED 22-MONTH FORFEITURE IS UNLAWFUL, ARBITRARY, CAPRICIOUS AND EXCESSIVE AND MUST BE REDUCED	102
A.	THE APPLICABLE STATUTE OF LIMITATIONS IS ONE YEAR.....	102
B.	THE PROPOSED FORFEITURE'S APPROACH TO ESTABLISHING PERIOD OF LIABILITY	103
C.	THE COMMISSION LACKS AUTHORITY TO AMEND OR EXTEND THE STATUTE OF LIMITATIONS	104
D.	THE COMMISSION'S RELIANCE ON <i>GLOBALCOM</i> IS MISPLACED AND IN ERROR.....	105

E.	THE PROPOSED FORFEITURE COVERING A 22-MONTH PERIOD VIOLATES THE APA AND SECTION 503(B)(6)	106
1.	The Commission Provided No Basis For Departing From The Established 12-Month Limitations Period.....	107
2.	The Commission Provided No Notice That It Would Extend The 12-Month Statutory Period.	108
F.	THE COMMISSION'S METHODOLOGY FAILS TO DISTINGUISH BETWEEN DETERMINING LIABILITY AND THE DEGREE OF CULPABILITY	109
G.	IMPOSITION OF THE 22-MONTH FORFEITURE PERIOD IS CONTRARY TO COMMISSION PRECEDENT.....	110
H.	THE COMMISSION MAY NOT REACH BEYOND THE 12-MONTH PERIOD TO IDENTIFY A VIOLATION THAT THEN BECOMES THE STARTING POINT FOR A "CONTINUING VIOLATION"	114
1.	The 12-Month Clock Began Ticking When the Alleged "Continuing Violations" Stopped In September 2006.....	115
2.	Compass Has Voluntarily Complied With the Commission's Rules Since September 2006	116
I.	THE PROPOSED 22-MONTH FORFEITURE IS IN ERROR AND, AT A BARE MINIMUM, A 10-MONTH CANCELLATION IS BOTH APPROPRIATE AND REQUIRED.....	117
J.	DISCRIMINATORY TREATMENT'.....	117
VI.	THE NAL IS PROCEDURALLY FLAWED AND INEFFECTIVE	118
	CONCLUSION.....	120

SUMMARY

Compass Global, Inc. ("Compass" or the "Company"), by undersigned counsel, hereby responds to the Notice of Apparent Liability ("NAL") for Forfeiture released by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned matter. In the NAL, the Commission reaches the tentative conclusions that Compass has apparently violated FCC rules by failing to file FCC Forms 499-A ("Form 499-A") and by making underpayments to the various federal support mechanism funds and to timely pay Regulatory Fees. These tentative conclusions are incorrect for both procedural and substantive reasons, as explained herein.

Procedurally, none of the issues identified in the NAL is ripe for determination by the Commission and, therefore, reaching determinations through an NAL proceeding and imposing forfeitures thereon deprives Compass of its due process rights to have the issues fully adjudicated in accordance with FCC rules and administrative appeals processes. Moreover, as shown in this Response, the Commission's tentative conclusions are substantively inaccurate as they are based on an incomplete record and incorrect application of the laws, regulations and Commission policies to the true and complete facts.

Compass has already availed itself of the protections afforded by the Commission's rules, pursuant to which the Universal Service Administrative Corporation ("USAC") and National Exchange Carrier Association ("NECA"), and not the FCC, are still considering the underlying issues which would have been necessary to support the NAL's threshold tentative conclusions;¹ i.e.,

¹ These issues are relevant to the deliberations of USAC and NECA inasmuch as they reflect upon the nature of Compass' September 2006 Form 499-A filings; as noted in Section II, *infra*, USAC has recently issued an "Administrator's Decision." That Administrator's Decision, however, in no way diminishes neither the relevance of, nor the unresolved nature of, these issues. The chronology of events in this matter clearly demonstrate that any delay in Compass' initial filings resulted from its sincerely held and reasonable belief that it is not obligated to report revenues or contribute to federal support mechanisms in the first instance; a belief founded upon management's diligent review and analysis of the Commission's rules, instructions to the Telecommunications

whether Compass is an entity which is subject to the sections of the Communications Act of 1934, as amended, and FCC rule sections cited in the NAL as forming the basis for apparent liability for forfeiture.² Compass continues to hold, and demonstrates herein, that it is not such an entity; therefore, the Company is not within the universe of entities against which the instant NAL may be brought.

As the facts in this matter reveal, however, the ultimate question of whether Compass is or is not an entity subject to FCC reporting and contribution obligations in the first instance is effectively moot. Compass has voluntarily conducted itself in accordance with whatever reporting and contribution rules might arguably have been applicable to the Company if it, indeed, were such an entity. And it has done so since the point in time when the Company became aware that the Investigations and Hearings Division ("IHD") harbored any doubts as to the validity of Compass' legal analysis and conclusions. Furthermore, as set forth herein, the filing of Compass' initial Forms 499-A in September, 2006 has been sanctioned by FCC Staff, IHD's specifically identified point of contact for this matter. Accordingly, no live issue exists which is ripe for Commission consideration through the NAL.

Notwithstanding the above, in order that any omission to address all issues raised in the NAL may not be held against Compass in later proceedings, Compass presents for the Commission, in Sections IV.A through F of this Response the underlying rationales for its legal position that it is not subject to reporting and contribution obligations in the first place. Compass also addresses, in Sections II and IV.H, the basis for the relief sought by the Company from USAC and NECA.

Reporting Worksheets each year since 1998, and consultations with experts in the field that were retained for the specific purpose of counseling Compass on its regulatory obligations. Thus, far from being a "willful" violator of FCC rules, Compass is actually a good actor which has voluntarily complied with rules which, as shown herein, are not legally enforceable against it.

² Sections 9, 225, 251(e)(2) and 254 of the Communications Act of 1934, as amended, and sections 1.1154, 1.157, 52.17(a), 52.32(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's Rules. NAL, ¶1.

Compass also repudiates the Commission's unlawful and ultra vires attempt to expand the statutory period for which forfeitures may be issued beyond twelve (12) months. To the extent Compass committed any violation whatsoever, the Commission may not impose any forfeitures for violations occurring beyond 12-months prior to the NAL's April 9, 2008 issuance.

Compass further challenges the validity of the NAL itself due to a variety of procedural infirmities incurred in its development and issuance. The NAL failed to comply with the Commission's procedural rules and, for this reason alone, is ineffective and unenforceable.

For all the above reasons, Compass respectfully requests that the Commission cancel the NAL in its entirety and direct the Enforcement Bureau to terminate proceeding File No. EB-06-IF-3060. Compass also respectfully requests that the Commission hold in abeyance all purported collection actions pending full and final resolution of Compass' further appeal of the June 2, 2008 Administrator's Decision and Compass' pending TRS appeals; Compass also respectfully requests that the Commission direct NECA to issue rulings on Compass' pending appeals within thirty (30) days of the date of full and final resolution of the issues raised in Compass' USAC appeal. Compass further requests that the FCC take such actions as may be necessary to bring about the dismissal of the pending Department of Treasury federal debt collection proceeding against it.

And, finally, to the extent the Commission concurs with the legal analysis and conclusions in Sections IV.A through F, *infra*, that Compass is not an entity subject to registration and Form 499 reporting requirements, Compass respectfully requests that the Commission: (1) direct the administrators of the respective funds and programs to which Compass paid contributions and fees in the past to issue full refunds of all payments made, including penalties and interest, and (2) order these administrators to suspend and cancel all future invoicing.

Before the

Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-06-IH-3060
Compass Global, Inc.)	NAL/ Acct. No. 200832080083
Apparent Liability for Forfeiture)	FRN No. 0009690256

Response of Compass Global, Inc.
To
Notice of Apparent Liability for Forfeiture

I. INTRODUCTION.

Compass Global, Inc. ("Compass" or the "Company"), by undersigned counsel, hereby responds to the Notice of Apparent Liability ("NAL") for Forfeiture released by the Federal Communications Commission in the above-captioned matter on April 9, 2008.³ Throughout the totality of the identified proceeding, EB-06-IH-3060, Compass has been fully responsive to all inquiries from the FCC's Enforcement Bureau (and prior to formal initiation of File No. EB-06-IH-3060, to similar inquiries from the FCC's Investigations and Hearings Division ("IHD")). Compass provided, through the course of on-going discussions and several written submissions, information and documentation which fully counter the NAL's tentative conclusions that the Company is subject to the FCC's reporting and contribution rules. Notwithstanding the unenforceability of these rules to the Company, since September 2006, Compass has complied with those rules on a purely voluntary basis and has made contributions to the various federal support funds as invoiced by the respective fund administrators since the Company's initial filings of Forms 499-A in September, 2006.

³ Compass has been granted multiple extensions of time within which to submit this Response, up to and including June 9, 2008.

This matter has apparently been forwarded by the Enforcement Bureau for FCC action without any attempt to ascertain what events have transpired since Compass' most recent submission of data to IHD in July, 2007.⁴ Nor has any attempt been made by the Enforcement Bureau or IHD, to obtain updated information from Compass; such information would have revealed the inappropriateness of a referral to the FCC. Thus, an overall lack of due diligence in the conduct of the investigation has resulted in the issuance of the present unwarranted apparent liability against Compass in the amount of nearly \$850,000.

Compounding the Enforcement Bureau's missteps, by issuing an NAL in this matter, the Commission has deprived Compass of significant due process rights granted by the FCC's rules. As permitted by Rule section 54.720, Compass filed a timely request for review of the USAC Administrator's unlawful refusal to accept and process the Company's revised Form 499-As for the years 2005 and 2006. Compass also exercised its right, pursuant to Rule section 54.720, to appeal to the TRS Administrator attempts to transfer debt for collection in violation of the Debt Collection Improvement Act of 1996 ("DCIA"). Compass' TRS appeals were filed February 8, 2008, and March 28, 2008, respectively. Compass notes that even the issuance of decisions from USAC and TRS on the pending appeals would not exhaust the Company's procedural rights in this matter. The FCC's rules grant Compass extensive due process rights with respect to these administrator appeals (which rights apply with equal force to protect Compass from liability flowing from a premature or otherwise procedurally flawed NAL proceeding); all of Compass' procedural protections will be vitiated if the instant NAL is not cancelled and retracted.

Wholly apart from the procedural infirmities of the NAL, Compass notes that tentative conclusions set forth in the NAL, specifically, that Compass has violated FCC rules regarding the

⁴ Moreover, as detailed in Section VI, the IHD apparently relied upon an inaccurate and incomplete official record and/or was provided misinformation by its delegated administrative agencies, thereby rendering the NAL itself a violation of the Commission's procedural rules. 47 C.F.R. §1.80.

timely filing of Forms 499 and has failed to pay or underpaid federal contribution and regulatory fee amounts, are incorrect. As to the first such erroneous conclusion, the Commission has either ignored or is unaware of the waiver granted by FCC Staff which effectively established an acceptable filing date of September 5, 2006 for Compass' Forms 499-A for 2005 and 2006.⁵ As documented herein, Compass complied with this filing deadline (and has consistently made timely submissions of FCC Forms 499-Q and 499-A since that date). As to the second erroneous conclusion, Compass has remitted support contribution payments based upon amounts invoiced to it by the various support fund administrators beginning in October, 2006, the month following submission of its first Forms 499-A. Compass continues to make support contributions despite the Company's knowledge that a portion of such contributions -- perhaps the totality of such contributions -- are appropriately classified as "overpayments."⁶ Indeed, inasmuch as FCC waiver deemed Compass' September 5, 2006 499-A filings timely, the FCC's rules mandate the acceptance by USAC of Compass' revised filings, submitted to USAC on September 4, 2007. Those revised forms reflect downward adjustments to Compass' reported revenues; thus, all payments made by Compass to date have been invoiced by the various administrative organizations at inflated rates, rendering all such contributions at least partial overpayments. Thus, contrary to the NAL's tentative conclusion, Compass has not underpaid federal support mechanism contributions and fees; in fact, quite the opposite is true.

Through the NAL, the Commission also reaches ultimate issues such as whether the nature of Compass' service model and the mechanism by which such services are provided places the Company within that class of entities upon which registration, reporting and contribution

⁵ As noted above, Compass' ultimate obligation to make such filings remains unsettled, notwithstanding the NAL's summary conclusions; thus, these September, 2006, filings -- and all such filings thereafter -- have been made entirely as an accommodation to IHD Staff.

⁶ Compass' federal support fund payments are documented at Section II hereof. As demonstrated therein, not only is the Commission incorrect that Compass has underpaid, Compass has actually overpaid federal support contributions and fees.

obligations may lawfully be imposed. It reaches those tentative conclusions in a vacuum, however, without regard to the fact that these precise issues are integral to the decisions which the USAC and TRS Administrators have been tasked with issuing. A consideration of these issues is necessary to a full understanding of the chronology of events and, therefore, must be considered by the FCC and NECA if equitable resolutions of Compass' pending appeals are to be reached.⁷ For purposes of File No. EB-06-IH-3060 and the follow-on NAL, however, these questions have been effectively relegated to the status of non-issues since September, 2006, when Compass voluntarily took on the reporting and contribution obligations which would have been applicable to it had the questions been answerable in the affirmative. Notwithstanding the fact that these issues are not yet appropriately before the Commission, Compass addresses them in this Response, both to facilitate the development of a full record in this proceeding and to protect itself from allegations of omission of relevant facts in future proceedings.

Given the procedural infirmities of the NAL proceeding overall, as well as the existence of an extensive factual history which demonstrates the inaccuracy of the Commission's tentative conclusions and assertions regarding liability and/or underpayments, the only acceptable course of action for the Commission here is the cancellation of the NAL. Cancellation would preserve Compass' due process rights as it continues to pursue information, assistance and relief from the FCC and NECA through the pending appeals. Additionally, through cancellation of the NAL, the Commission would avoid undermining the administrative scheme established by Congress through Section 254 of the Act and Part 54 of its own Rules.

⁷ As noted above, on June 2, 2008, USAC issued an "Administrator's Decision" in connection with Compass' pending appeal. Compass will be filing a petition for review of that decision within the time allotted by FCC rules in which the FCC will review *de novo* all matters raised in the Company's USAC appeal. Inasmuch as Compass' USAC appeal addresses novel issues of fact, law, or policy, it is anticipated that the Petition for Review will be acted upon by the full Commission rather than the Wireline Competition Bureau. Accordingly, throughout the remainder of this Response, the FCC, rather than the Bureau, is identified as the entity which will hereafter be considering Compass' USAC appeal issues.

II. BACKGROUND/CHRONOLOGY OF EVENTS.

As the NAL notes, Compass is an entity formed under the laws of the State of New Jersey.⁸ The NAL's assertion, however, that Compass "has provided telecommunications services since 1998," is too broad a statement. What may accurately be said is that Compass has possessed authority pursuant to Section 214 of the Act since 1998, at which time the Company's corporate name was "Forval International Telecom, Inc." In 2000, the Company's name was formally changed to Compass, Inc. and, in February, 2001, the Company adopted the fictitious name of Compass Global, Inc., pursuant to which it operates today. As more fully explained in Sections IV.A through F, *infra*, Compass does not provide "telecommunications services" to end-users for a fee. Rather, the Company provides wholesale "IP-in-the-Middle" services ("Enhanced Wholesale Service" or "EWS") which are neither offered to the public *nor* to such classes of users as to be effectively available directly to the public, but instead are offered on a private, non-common carrier basis to unaffiliated entities which are themselves telecommunications carriers, Enhanced Service Providers or private service providers.⁹ The Company also provides local and toll-free access to an enhanced, IP-based session processing platform ("Enhanced Platform Service" or "EPS") to unaffiliated companies which incorporate the EPS into their own distinct distributions and sales of privately labeled, serviced and supported prepaid calling cards. As shown herein in Sections IV.A through F, Compass provides EPS on a private, non-common carrier basis to unaffiliated entities

⁸ NAL, ¶ 8.

⁹ Regardless of whether the EWS are or are not "telecommunications services," Compass is exempt from USF and other federal support contributions and regulatory fees on revenue derived from customers of its EWS because all such customers are either direct contributors themselves or are statutorily-exempt, as explained in Section IV.A through E, *infra*, and as shown in **Exhibit 1**, which manifests Compass' procedures for ensuring that it reports as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service or which are statutorily exempt, for reasons certified under penalty of perjury by each such customer.

which Compass reasonably believed to be direct contributors. Wherefore, Compass is not obligated to pay federal support contributions and fees based on revenue derived from EPS.¹⁰

In June, 2006, Compass was apparently included in a widespread Section 64.1195 Compliance Survey undertaken by the IHD of the FCC's Enforcement Bureau. At that time, Compass received two separate form letters, the first addressed to Compass Global and the second addressed to Forval Telecom, a corporate name which, as noted above, the Company has not used for a period of approximately five years. In those letters, IHD advised the Company that:

“if your company is planning to provide or is providing any of these [enumerated] telecommunications services to end-users for a fee, you must register with the Universal Service Fund Administrator if you have not already done so.”¹¹

Compass did not provide any of the telecommunications services referenced in the letters nor did it provide any services, at all, to “end-users” and, thus, was not effectively put on notice merely by receipt of the letters that it might be considered by the IHD to be an entity subject to the FCC's rules regarding revenue reporting and federal support contribution obligations. The letters also directed, however, that “[i]f you have any questions, please contact Nand Gupta” and provided telephonic and email contacts for Mr. Gupta.

Mr. Dean Cary, President of Compass, contacted Mr. Gupta. He did so not because he believed the Company had any registration or contribution obligations, but rather to bring to IHD's attention the fact that two letters, referencing two separately named corporations, had been received

¹⁰ Under the broadest interpretation of Commission rules and precedent (which is the interpretation Compass applied in preparing its 2005 and 2006 Form 499-A revisions (pending FCC and TRS appeals), 2007 Form 499-A revision, and all Forms 499 filed since July 2007), Compass revenue derived from its EPS *might* be considered “toll services” revenue because of the “local or toll-free access” component. Indeed, had Compass separately invoiced its EPS customers for “access” separately from the Enhanced Platform service itself, Compass arguably would have over-reported EPS revenue in all previously filed Form 499s. One thing is irrefutable – the revenue is absolutely not prepaid calling card revenue subject to “face value” reporting.

¹¹ June 9, 2006, letter from Hugh L. Boyle, Chief Auditor, Investigations & Hearings Division, Enforcement Bureau, “Re: Section 64.1195 Compliance Survey, Reference Number: UC 4-11” (for Compass; Reference Number: UC 3-20, for Forval), pp. 2-3.

when, in fact, only a single entity existed. It was not until the time of this conversation that Compass received notice that there might exist any ambiguity in its legal conclusion (i.e., that since it was not providing telecommunications services to end-users for a fee, it was not within the scope of entities which were subject to FCC reporting and contribution obligations).

Over the next few months, Compass continued to engage in discussions with IHD Staff, providing information in response to IHD inquiries and attempting to gain a fuller understanding of the issues which were apparently of concern to IHD. Nothing throughout this discussion process convinced Compass that the nature of its service offering brought it within the universe of carriers which should have registered with USAC and reported revenues via FCC Form 499. Conversely, over the months following issuance of the June 9th compliance audit letters, IHD Staff adopted a contrary position and became increasingly entrenched in that position. Although no information provided by IHD had convinced Compass of the validity of IHD's position on the issue, it became apparent to the Company that regardless of whether Compass was actually obligated to file FCC Forms 499 (and thereafter contribute to the funding of federal support mechanisms), unless it took such action expeditiously, IHD intended to initiate a formal investigation proceeding against the Company.

Compass' inability to move IHD from its entrenched position convinced the Company that nothing short of acquiescence to IHD's demands would avoid the initiation of a formal proceeding – a proceeding which might ultimately lead to the disruption of Compass' established contractual relationships with its customers. Thus, Compass ultimately advised IHD that it would commence filing Forms 499; however, in order to engage a firm to assist it with the completion of the forms, Compass requested – and was granted – a number of short extensions of time within which to place its Forms 499-A for 2005 and 2006 on file.

On August 30, 2006, Mr. Cary received an e-mail from Nand Gupta, the individual specifically identified in the compliance audit letters as IHD's contact point on this issue. In that e-mail, Mr. Gupta first noted the pre-existing filing deadline of August 25, 2006; Mr. Gupta then established a final due date for the filing of Compass' Forms 499-A for 2005 and 2006. That date was established by Mr. Gupta as September 5, 2006. In addition to establishing this acceptable submission timeframe, Mr. Gupta noted that Compass would only be considered in noncompliance with FCC rules if it did not complete its efforts to finalize these forms by that September 5th date. Compass submitted Forms 499-A for 2005 and 2006 in accordance with Mr. Gupta's instructions, and has continued to file Forms 499-A and 499-Q on a timely basis thereafter.¹²

Shortly after Compass made its September, 2006 filings, the Company began to receive invoices from the various federal support fund administrative agencies. A month-by-month account of this invoice activity, as well as details of Compass' contributions and payments, follows.

October, 2006

Compass received Invoice No. M-10253452, dated 10/31/06, from Neustar, reflecting a LNP liability of \$3,603.34 and Invoice No. M-10253451, reflecting a SOW liability of \$71.27. The total amount due (\$3,674.61) was paid in full by Compass on April 7, 2007.¹³ The Commission's

¹² Compass' original Forms 499-A for 2005 and 2006 are attached as Exhibit 2 hereto. Additional copies of these filings, along with copies of all Form 499-A and 499-Q filings subsequent thereto, are attached to this Response as Exhibit 3.

¹³ Consistent with Compass' position that it is not and never has been subject to FCC registration, reporting, and contribution obligations, the totality of this payment, \$3,674.61, would represent an overpayment of LNP and SOW contributions. Even after application of Compass' revised Form 499-A revenue figures following disposition of Compass' pending USAC appeal, the actual amount of this contribution will still constitute an overpayment by Compass of this and every other invoice the Company has paid. A copy of this invoice, and Compass' payment evidence, is set forth at Exhibit 4 hereto.

Upon submission of its revised Forms 499-A for 2005 and 2006, Compass advised USAC that "[d]espite the FCC's lack of legal authority to regulate Compass' service offerings as either "telecommunications" or "telecommunications services," Compass remains willing to remain a registered ITSP In the event USAC refuses to . . . process Compass' revised 2005 Form 499-A, Compass will file to cancel and withdraw all Form 499s and will seek full refund of all USF and

tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

November, 2006

Compass received Invoice No. TRS0039058, dated November 5, 2006, in the amount of \$156,778.49 for 2006 Invoice, plus \$100.00 in 2006 Late Filing Penalty. Compass also received a supplemental invoice, dated November 30, 2006, imposing a late payment charge of \$90.26. Compass believed this invoice to be associated with Interstate Telecommunications Relay Service charges, which the Company believed were inapplicable to it. Since the amount reflected on the initial invoice was significant and payment of which would have a material effect on operations, the Company was reluctant to make payment in full without further investigation to determine whether the invoiced charges resulted from Form 499-A reporting errors, thus giving rise to a duty to file revisions.¹⁴ The Company did, however, immediately undertake an internal review and legal analysis of the invoice's subject matter. Ultimately, though still not convinced the invoiced amount was applicable to it, Compass commenced discussions with the FCC with an eye toward establishing a payment plan for this large lump-sum invoice.¹⁵ Compass did not "refuse" or "fail" to pay the NECA TRS invoiced charges. To the contrary, Compass made every reasonable and lawfully

other regulatory charges billed to date, as is its legal right due to its status as neither a telecommunications carrier nor telecommunications provider under applicable laws and regulations." See, September 4, 2007, revised 2005 Form 499-A transmittal letter, p. 2. Thus, in the event USAC does not process Compass' revised filings, thereby facilitating a re-rating of contribution amounts to appropriate levels, the full amount of this payment, as well as all payments documented in this section, will constitute overpayment by Compass.

¹⁴ Filing revisions to Form 499-A, due to filer error, is both a right and an obligation. See e.g., Instructions to the Telecommunications Reporting Worksheet, Form 499-A, March 2006 at page 10. ("A filer must submit a revised Worksheet if it discovers an error in the revenue data that it reports.")

¹⁵ See, http://www.neca.org/media/070507carrierletter0608_2.pdf ("If you currently make a single annual contribution and your annual contribution requirement exceeds \$1,200, you may opt to pay in twelve equal monthly installments. If you decide to pay monthly, you must first contact Marina Aparicio at 973-884-8334 or maparic@neca.org. Then, please divide the total contribution requirement by twelve and return the first month's payment to NECA by the due date.")

required effort to negotiate a 12-month payment plan with NECA; Compass cannot be faulted for non-payment given these facts. The Commission's tentative conclusion in NAL paragraph 23 is premature; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received LNP Invoice, dated November 5, 2006, in the amount of \$2,871.80. The total amount was paid in full by Compass on April 7, 2007.¹⁶ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

December, 2006

Compass received NECA Invoice No. FL-38569, dated 12/31/06, in the amount of \$932.68 for a late payment charge for 2006 Invoice; the Company's review and analysis of the situation continued.

Compass received Invoice No. M-10261858, dated 12/31/06, from Neustar, reflecting a LNP liability of \$2,931.67 and Invoice No. M-10261857, reflecting a SOW liability of \$71.19. The total amount due (\$3,002.86) was paid in full by Compass on April 7, 2007. The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received NANP Invoice, dated 12/31/06, in the amount of \$715.39. The total amount due was paid in full by Compass as part of an April 10, 2007 wire transfer.¹⁷ The Commission's tentative conclusion in NAL paragraph 24 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

January, 2007

Compass received USAC Invoice No. UBDI0000233423, dated 01/22/07, in the amount of \$39,179.81 in current charges. The total amount due was paid in full by Compass on February 15,

¹⁶ Compass overpayment of up to \$2,871.80. See Exhibit 5 hereto.

¹⁷ Compass overpayment of up to \$3,718.25. See Exhibit 6 hereto.